IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EMANUEL TUCKER, : CIVIL NO. 1:10-CV-1057

Petitioner : (Judge Rambo)

v. : (Magistrate Judge Smyser)

NFN MARTINEZ; DAVID EBBERT; and KEVIN BITTENBENDER, d/b/a U.S. DEPARTMENT OF JUSTICE, BUREAU OF PRISONS,

Respondents :

MEMORANDUM

Before the court is a report of Magistrate Judge Smyser in which he recommends that Petitioner Tucker's petition for writ of habeas corpus be dismissed for failure to exhaust administrative remedies or, in the alternative, that the petition be denied on the merits. Objections to the report and recommendation were due no later than August 6, 2010. No objections have been filed.

In the pleadings before the court, Petitioner concedes that he has not exhausted administrative remedies. He claims, however, that he would be released from prison before the time to exhaust was completed. The magistrate judge found that the time to exhaust could have been completed prior to the expiration of his sentence.

This court will adopt the report and recommendation and dismiss on the basis of failure to exhaust administrative remedies. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: August 11, 2010.

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ORDER

In accordance with the accompanying memorandum, IT IS HEREBY ORDERED THAT:

- 1) the petition for writ of habeas corpus filed pursuant to 28 U.S.C.
- § 2241 is dismissed for failure to exhaust administrative remedies.
 - 2) This court declines to issue a certificate of appealability.
 - 3) The Clerk of Court shall close the file.

s/Sylvia H. Rambo
United States District Judge

Dated: August 11, 2010.